IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-11

REVEREND JOSEPH BOONE,

Petitioner,

—v.—

THE STATE OF GEORGIA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Constitutional Provisions:

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THE STATE OF GEORGIA,

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STATE OF GEORGIA

Petitioner, Reverend Joseph Boone, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Georgia entered on April 4, 1979.

OPINION BELOW

The opinion of the Supreme Court of Georgia reversing the decision of the

State Court of Fulton County, Georgia, is reported at 243 Ga. 416, 254 S.E.2d 367 appended hereto at App. infra, p. 4-A. (1979) The order of the State Court of Fulton County, Georgia is appended hereto at App., infra, p. 1-A.

JURISDICTION

The opinion of the Supreme Court of Georgia was entered on April 4, 1979. The Supreme Court of the United States has jurisdiction to grant a writ of certiorari in this case pursuant to 28 U.S.C. §§1257(3),[1] 2101(d) and U.S. Sup. Ct. Rule 22.1, 28 U.S.C..

[1]A final judgment upholding the validity of a state statute against Constitutional challenge has been rendered herein by the highest court of the State of Georgia. Notwithstanding the fact that further proceedings must take place on the merits, the opinions of this Court demonstrate that the decision of the Georgia Supreme Court is "final" within the meaning of 28 U.S.C. §1257. Cox Broadcasting Corp. v. Cohn 420 U.S. 469 (1975).

QUESTIONS PRESENTED FOR REVIEW

I. WHETHER GA. LAWS 1976, PP. 471, 472, GA. CODE §§91-134 AND 91-9908, WHICH RENDERS SPEECH-RELATED CONDUCT ON ALL STATE PROPERTY AND BUILDINGS UNLAWFUL, IS VAGUE AND OVERBROAD IN VIOLATION OF THE RIGHT TO DUE PROCESS UNDER THE FOURTEENTH AMENDMENT, BY DENYING FAIR NOTICE OF ITS PROHIBITIONS, VESTING OFFICIALS WITH UNFETTERED DISCRETION FOR ITS ENFORCEMENT, AND INFRINGING THE EXERCISE OF FIRST AMENDMENT RIGHTS TO FREE SPEECH AND ASSEMBLY.

II. WHETHER GA. LAWS 1976, PP. 471, 472, GA. CODE §§91-134 AND 91-9908, WHICH RENDERS SPEECH-RELATED CONDUCT ON ALL STATE PROPERTY AND BUILDINGS UNLAWFUL, VIOLATES THE FIRST AMENDMENT IN THAT THE BREADTH OF ITS PROHIBITIONS PUNISHES THE EXERCISE OF RIGHTS TO FREE SPEECH AND ASSEMBLY.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the First and Fourteenth Amendments to the Constitution of the United States, and the following Georgia statute[1]:

Ga. Laws 1976, pp. 471, 472. (Ga. Code Sec. 91-134).

> Section 1. The Georgia Building Authority and its security personnel are hereby authorized and empowered to deny the entrance of any person into or upon any property or building of the Authority or the State when such person's activities

[1]The above-cited statute--the basis of Petitioner's arrest--was enacted in 1976 and was effective March 18, 1976. In 1978, Section 1 was amended, extending its authority to "members of the Georgia State Patrol and Georgia Bureau of Investigation." Ga. Laws 1978, p. 850.

> are intended to disrupt or interfere with the normal activities and functions carried on in such property or building or have the potential of violating the security of the personnel therein. The Authority and its security personnel are hereby authorized and empowered to deny entrance into or upon any such property or building of any person displaying any sign, banner, placard, poster or similar device. The Authority and its security personnel are hereby authorized and empowered to remove any person from any such property or building when such person's activities interfere with or disrupt the activities and the operations carried on in such property or building or constitute a safety hazard to such property or

building or the inhabitants thereof. The authority and power provided herein shall also extend to any property or building utilized by the State or any agency thereof. Any law enforcement officer assisting the Authority or any of its security personnel shall have the same authority and power bestowed upon the Authority by this law [§§ 91-134, 91-135, 91-9908].

Ga. Laws 1976, pp. 471-472. (Ga. Code Sec. 91-9908).

Section 3. Any person who shall refuse to obey any lawful order of any such security personnel or law enforcement officer issued pursuant to this Act, [Sections 91-134 and 91-135], or any person who shall refuse to vacate any such property

or building when requested to do so, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as for a misdemeanor.

STATEMENT OF THE CASE

On September 15, 1976, the Petitioner, Reverend Joseph Boone, was among twenty to forty Georgia citizens who entered the World Congress Center, 285 Magnolia Street, N.W., Atlanta, Georgia. The Center is a very large convention center involving several acres under roof, and is the property of the State Building Authority of Georgia. Inside, Reverend Boone led prayers in protest against diminishing welfare benefits in the State of Georgia, and employment discrimination occurring in the Center. Highway Patrolmen, who were assisting Georgia Building Authority security personnel, surrounded the demonstrators, removed their hats

and "respected" the prayers of the group. After the prayer had been completed, Patrolmen ordered Reverend Boone to leave the Center. Reverend Boone asked to meet with the Manager of the Center and was told to wait while he was summoned. Subsequently, the Patrolmen refused to let the group wait and arrested all the demonstrators.

Pursuant to Ga. Laws 1976, pp. 471, 472, Ga. Code §91-134, police charged the demonstrators with a misdemeanor. (R. 3) App., infra, 10-A. At the preliminary hearing all charges were dismissed except as to Reverend Boone. No order to leave the Center was given except to Reverend Boone. A demurrer was filed, challenging the constitutionality of the statute on its face. (R. 4) The demurrer asserted that the statute was vague and overbroad in violation of the due process and equal

protection clauses of the United States Constitution, and that the statute restricted free speech and assembly in violation of the First Amendment.

On November 8, 1978, a hearing was held before Honorable Daniel Duke, Judge of the State Court of Fulton County. The court declared the statute in question "unconstitutional on its face because of its vagueness, overbreadth, and prior restraint on speech in violation of the Georgia and United States Constitutions." The court found that the statute vested security personnel with the power to exclude persons from State property based on a determination of "the subjective intent of a party prior to any act being committed." App., infra, p. 2-A. (emphasis added) The court further interpreted Ga. Code §91-134 to authorize the exclusion of persons from State property under

circumstances where they merely display any sign, banner, placard, poster or similar device. The court's opinion concluded that Ga. Code §§91-134 and 91-9908 are unconstitutionally vague and overbroad in violation of the due process and equal protection clauses, and restrict free speech and assembly contrary to the First Amendment. The petitioner was discharged. Subsequently, the State filed a Notice of Appeal to the Supreme Court of Georgia. (R. 1)

On appeal, the Georgia Supreme Court reversed the lower court decision finding that "it was error to hold the statute unconstitutional." App., infra, p. 6-A. The majority opinion held that Ga. Code §91-134 was not facially overbroad or so vague as to violate First Amendment guarantees of free speech and assembly, nor was it violative of

constitutional protections of due process or equal protection under the Fourteenth Amendment.

The Georgia Supreme Court's analysis held that the language of the statute proscribes "specific conduct" which disrupts or has the potential to disrupt normal activities and does not infringe on the exercise of free speech. The court upheld the authority of state personnel to exclude based on their subjective evaluation of persons' intent to disrupt or to potentially violate the security of building personnel, including the authority to make those determinations where no overt act has been committed, and unguided by objective criteria regarding the behavior of persons seeking entrance. The court failed to find that this unfettered discretion rendered the statute's prohibitions vague and overbroad in

violation of Petitioner's constitutional rights.

The power of security personnel "to deny entrance into or upon any such property or building of any person displaying any sign, banner, placard, poster or similar device," (Ga. Code §91-134) (emphasis added), was held by the court not to prohibit entry "merely because such signs or placards are present." App., infra, p. 8-A. The Georgia Supreme Court found that this provision could only be interpreted by construing it in conjunction with the exercise of discretion regarding intent and potential for violence, described in the first sentence of the statute.

The majority's opinion further held that the statute comports with fair notice. The court was only able to arrive at this interpretation by grafting onto

the statute the requirement of an "actual or imminent threat of harm or of disruption of on-going operations on State property or in buildings housing State agencies." App., infra, p. 8-A.

The court held finally that the statute represented a reasonable time, place and manner regulation not "'sweeping within its prohibitions' what may not be punished under the First and Fourteenth Amendments." App., infra, p. 8-A.

The Georgia Supreme Court's interpretation of the Statute before this Court is not sufficient to uphold the constitutionality of the statute. Petitioners assert further that the purported "saving construction" devised and applied by the Georgia Supreme Court is required neither by the language or context of the statute challenged here. The limitations imposed by the court's construction cannot "save" this statute which unconstitutionally punishes Petitioner's exercise of First and Fourteenth Amendment Rights.

REASONS FOR GRANTING THE WRIT

I. The Opinion Of The Georgia Supreme Court Upholding The Constitutionality Of Ga. Laws 1976, pp. 471, 472, Ga. Code §§91-134 and 91-9908, Is In Conflict With Applicable Decisions Of This Court.

A. The Georgia Statute Is Not A Constitutionally Permissible Regulation Of Time, Place And Manner In That It Is Facially Overbroad.

Section 1 of Ga. Laws 1976, pp. 471, 472 (hereinafter referred to as Ga. Code §91-134) impermissibly proscribes conduct that includes expressive activity protected by the First Amendment. The statute is overbroad, and as such, unconstitutional on its face because it "does not aim specifically at evils within the area of government control, but . . . sweeps within its ambit other activities that constitute an exercise" of protected expressive rights. Thornhill v. Alabama 310 U.S. 88, 97 (1940).

Any regulation of speech-related conduct is constitutionally impermissible unless (1) it furthers an important or substantial governmental interest, (2) the governmental interest is unrelated to the suppression of free expression, and (3) the incidental restriction on First Amendment freedoms is no greater than is essential to the furtherance of that interest. United States v. O'Brien 391 U.S. 367, 377 (1968). Statutes regulating in the First Amendment area must be "couched in the narrowest terms that will accomplish the pin-pointed objective permitted by . . . the essential needs of the public order . . . . In this sensitive field, the State may not employ 'means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.' Shelton v. Tucker 364 U.S. 479, 488, 5 L.Ed.2d. 231, 237, 81 S.Ct. 247 (1960)." Carroll v. President and Commissioners of Princess Anne County 393 U.S.

174, 183-84 (1968). E.g., Gregory v. City of Chicago 394 U.S. 111 (1969); Edwards v. South Carolina 372 U.S. 229 (1963); NAACP v. Button 371 U.S. 415 (1963).

On its face and as construed by the Supreme Court of Georgia, the Georgia statute in question is unconstitutional because it was not drawn with the specificity required by the decisions of this Court--creating a blanket ban on speech-related activity occurring on any building or property of the State of Georgia.

Regulation as to place bears important constitutional significance in the First Amendment area in two ways. First, this Court has always offered a preferred place to the unfettered exercise of First Amendment rights "to petition the Government for a redress of grievances," finding that free access for the exchange of ideas is essential to a strong representative democracy. The site of the

legislature and governmental agencies has thus been a traditional forum for the expression of such ideas. Through Ga. Laws 1976, pp. 471, 472, Ga. Code §§91-134 and 91-9908, the State of Georgia has impermissibly sought to insulate itself by denying citizens access to all state government forums to voice their protests.

Secondly, courts have distinguished among types of public places, finding that the character of the place affects the degree of restriction tolerable under the Constitution. Grayned v. City of Rockford 408 U.S. 104, 116 (1972); Lehman v. City of Shaker Heights 418 U.S. 298, 302 (1974). In each case, "the crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time." In making this determination, courts "must weigh heavily the

fact that communication is involved" and examine carefully whether the regulation at issue is "narrowly tailored to further the State's legitimate interest." Grayned v. City of Rockford 408 U.S. 104, 116-117 (1972). Furthermore, the propriety of the place turns on the relevance of the premises to the protest. Relevance may be found either because the place represents the object of the protest, or because demonstrators find a relevant audience in a particular place. Brown v. Louisiana 383 U.S. 131 (1966); Edwards v. South Carolina 372 U.S. 229 (1963); Wolin v. Port of New York Authority 392 F.2d 83 (2d Cir. 1968), cert. denied, 303 U.S. 940 (1968).

This Court has held statutes invalid and reversed convictions where speech-related conduct was impermissibly regulated on the grounds of the

United States Capitol, Jeannette Rankin Brigade v. Chief of Capitol Police 342 F.Supp. 575 (D.C. D.C. 1972), aff'd 409 U.S. 972 (1972); at City Hall and the Mayor's residence, Gregory v. City of Chicago 394 U.S. 111 (1969); in a bookmobile which was part of a public library, Brown v. Louisiana 383 U.S. 131 (1966); and on Statehouse grounds, Edwards v. South Carolina 372 U.S. 229 (1963).

In contrast, those instances where the Court has upheld the denial of access to public places for speech-related conduct involve statutes narrowly drawn to meet important security needs and governmental interest. For example, in Adderly v. Florida 385 U.S. 39 (1966) this Court held that for valid security reasons, demonstrators could not lawfully refuse to leave the premises of a county jail normally closed to the public. And, in Cox v. Louisiana 379 U.S. 559 (1965)

(Cox II) a narrowly drawn statute which prohibited picketing and parading near or inside a courthouse was upheld to preserve the fair and orderly administration of justice. Thus, though reasonable regulation is permissible in public places, rights to free speech and assembly may not be abridged in the name of regulation. The Georgia statute does not constitute legitimate regulation in that it fails to distinguish among types of public buildings and the types of normal activities carried on there. The Court's analysis of the governmental interest at stake, and the relevance and propriety of the forum to the expressive conduct sought to be regulated, varies widely as between a jail or a courthouse and a vast public meeting hall such as the World Congress Center. Petitioner does not assert that all regulation of speech-related activity

on state grounds is impermissible, but rather that in attempting to secure this end, the State has drawn too broadly with the consequence of restraining important First Amendment freedoms.

The punishment provisions in Ga. Laws 1976, pp. 471, 472, Secion 3 (hereinafter referred to as Ga. Code §91-9908) are likewise irreconcilable with the balance that must be struck between First Amendment activity and narrow government regulation. Ga. Code §91-9908 makes it a misdemeanor for any person to either (1) refuse to obey a lawful order pursuant to the Act, or (2) refuse to vacate any property or building when requested to do so. The principal problem with the first provision of §91-9908 is §91-134. Under §91-134, a unilateral decision on the part of security personnel that activities interfere with normal operations inside

the building suffices to make a removal order "lawful." Under §91-134, denial of entrance to anyone carrying a sign is "lawful." The problem is that "lawful" is defined by §91-134, whose reach is impermissibly broad and violates federal constitutional principles. "Lawful" orders authorized under §91-134 are not "lawful" at all.

The second provision of Ga. Code §91-9088 does not require even a "lawful" order pursuant to the Act. If any security officer asks any other person to leave any State building--or any building utilized by the State or any of its agencies--the person must either obey or be guilty of a misdemeanor. The provision imposes criminal penalties without requiring any act or word independent of refusal, yet it requires no basis whatsoever for the request that is refused.

B. The Georgia Statute Is Unconstitutionally Vague In Violation Of The Fourteenth Amendment Guarantee Of Due Process.

Ga. Code §91-134 is unconstitutionally vague in that it fails to clearly define proscribed conduct. Security personnel are authorized to "deny the entrance of any person into or upon any property or building of the Authority or the State when such persons' activities are intended to disrupt or interfere with the normal activities and functions carried on in such building or property or have the potential of violating the security of personnel therein." (emphasis added) This provision (1) violates the requirement of fair warning to the innocent, (2) fails to provide explicit standards for its application, impermissibly delegating authority to security personnel and creating the danger of arbitrary and discriminatory application, and (3) operates

to inhibit the exercise of cherished First Amendment rights to free speech and assembly.

The Georgia Supreme Court construed this statute to include only "actual or imminent" disruption, citing Grayned v. City of Rockford, supra. App., infra, p. 8-A. However, this limitation is insufficient alone to save this statute from being held invalid.[1] In Grayned, this Court carefully relied on other parameters clearly provided by the Illinois statute, which strictly limited its applicability, i.e. the statute forbade noise willfully created, which disrupted or was about to disrupt normal school activities at fixed

[1]Furthermore, petitioners contend that the broad language of Ga. Code §91-134 does not warrant this limiting construction. Intent to disrupt or interfere can not be equated with the actual or imminent causation of such harm.

times and at a sufficiently fixed place. Grayned v. City of Rockford 408 U.S. 104, 110-112 (1972). There are no similar limits circumscribing the reach of Georgia's statute, which extend to all State buildings and property, at all times.

The statute in issue, even as construed by the Georgia Supreme Court, fails to impose any further requirement regarding the nature of the disruption created. But, as this Court has held, the danger sought to be protected against must rise "far above public inconvenience, annoyance or unrest" within the First Amendment context. Terminello v. City of Chicago 337 U.S. 1, 4-5 (1959). This Court also has required that proscribed speech-related activity be confined to instances where the disruption or interference is "material and substantial." Tinker v. Des Moines Independent School District 393 U.S. 503 (1969); Brown v. Louisiana 383 U.S. 131 (1966).

When First Amendment rights are implicated, the permissible indefiniteness of official discretion narrows. Schneider v. State 308 U.S. 147 (1939). In Cox v. Louisiana 379 U.S. 536, 558 (1965) (Cox I) this Court stated that while "limited discretion, under properly drawn statutes . . . concerning the time, place, duration or manner" of using public property "may be vested in administrative officials," the Court voided the Louisiana statute because it provided such a "broad discretionary licensing power" as to permit selective and arbitrary enforcement. The absence of any limitation on the exercise of discretion under Georgia's statute herein similarly requires its invalidation.

The danger of broad discretion here is particularly pernicious where it is the official's task to make a purely subjective determination of a person's "intent" or

their "potential" to have certain effects. Ga. Code §91-134 requires only such a determination of "intent." There is no requirement of any overt act. Nor does Ga. Code §91-134 require that the "intent" be sufficiently definite as to rise above the type of "undifferentiated fear or apprehension of disturbance" or disorder, constitutionally protected by the First Amendment. Tinker v. Des Moines Independent School District 393 U.S. 503 (1969). And, no criteria exist nor may any be inferred in making such a finding of intent.

Further evidence of the statute's vagueness may be found in the fact that the accusation in this action was redrawn four times. App., infra, 10-A. There clearly can be no "fair warning" to innocent citizens under a statute where officials and lawyers charged with its enforcement fail to comprehend its meaning sufficiently to write a formal complaint thereunder. This also demonstrates the lack of any criteria by which

security personnel and others granted authority under the statute may be guided in the exercise of discretion in applying it to exclude or remove persons from state property.

II. This Case Presents A Substantial Federal Question Implicating The Unfettered Exercise Of Fundamental Rights Under The First Amendment.

The Georgia statute before this Court aims specifically at the bona fide intent to exercise freedoms of speech and assembly protected by the First Amendment. It applies to circumstances where the interest in expression may be great compared to a miniscule public interest in regulating that expression.

Contrary to the Georgia Supreme Court's finding that the statute proscribes only conduct, the restrictions it imposes on speech are quite direct. Ga. Code §91-134 authorizes security

personnel to deny entrance onto State property to "any person displaying any sign, banner, placard, poster or similar device." (emphasis added) This display-of-a-banner provision is strikingly similar to the provision held unconstitutional by this Court in Jeannette Rankin Brigade v. Chief of Capitol Police 342 F.Supp. 575 (D.C. D.C. 1972), aff'd 409 U.S. 972 (1972). That statute was however, even more narrowly circumscribed than Georgia's provision, imposing the additional element that the device be "designed to bring into public notice any party, organization or movement." Ga. Code §91-134 extends to even the tiniest sign carried on to State property. Applying the "intent" requirement imposed onto this provision by the Georgia Supreme Court's interpretation does not sufficiently limit this ban in the context of restricting speech.

The constitutional invalidity of this Georgia statute extends beyond the legitimate limitation of expressive conduct imposed in the interest of maintaining order, to chill and restrain individuals' unfettered exercise of First Amendment rights on all State property. The vagueness and overbreadth present therein deny to Georgia citizens the right to free speech and free assembly in derogation of the exercise of their First Amendment rights.

CONCLUSION

Based on the foregoing, Petitioner, Reverend Joseph Boone, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Georgia entered April 4, 1979, which upheld the constitutionality of Ga. Laws 1976, pp. 471, 472, Ga. Code §§91-134, 91-9908.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

IN THE STATE COURT OF FULTON COUNTY

STATE OF GEORGIA)
)
v.) No. 1 8 2 4 6 7
)
REVEREND JOSEPH BOONE)

O R D E R

This case came on for trial and before joining issue on the merits, the Court heard oral argument of counsel on the demurrer filed by defendant, and makes the following determination.

Paragraph Three of demurrer asserts that the statute in question, Ga. Code §91-134, Acts 1976, p. 471-72, is facially unconstitutional because of its vagueness, overbreath, and prior restraint on speech in violation of the Georgia and United States Constitutions. The Court observes that statute in question arms security personnel with authority to determine

the subjective intent of a party prior to any act being committed; it arms such personnel with the authority to exclude persons from entering State Building Authority properties if the security person determines that one seeking entry has the potential of violating the security of personnel therein thus placing in the hands of security persons the ability to exercise prior restraint on free speech; and it arms security persons of said authority with the authority to exclude persons from entry on to State Building Authority premises merely because they display banners, placards, etc., again placing security persons in the position of exercising prior restraint on free speech.

The Court finds that Ga. Code §91-134 & 9908 Laws 1976, p. 471-72 is unconstitutional on its face because of

its vagueness and because it is so overbroad as to violate the due process and equal protection clauses of the Georgia and United States Constitutions and invites discriminatory application in violation of the equal protection clause under Ga. Constitution, Article I, Sec. I, para. III (Ga. Code 2-103), para. II (Ga. Code 2-102); and United States Constitution, Fifth and Fourteenth Amendments. Further, the Court rules that the statute restricts free speech and assembly contrary to the First Amendment of the United States Constitution and Georgia Constitution Act 1, Sec. 1, para. XV (Ga. 2-115).

The remaining grounds of the demurrer need not be passed upon because of the above ruling.

The statute under which the defendant was charged having been

declared unconstitutional, the defendant is hereby discharged.

This 8th day of November, 1978.

/s/ Daniel Duke

34633. THE STATE v. BOONE.

UNDERCOFLER, Presiding Justice.

This appeal by the state challenges dismissal of criminal misdemeanor charges against Boone for leading

approximately 25 people in a demonstration on state property known as the Georgia World Congress Center. The state's indictment was brought under Code Ann. §§ 91-134 and 91-9908 (Ga. L. 1976, pp. 471-473, as amended), which prohibits interference with and disruption of activities and operations on all state property and in all state buildings.[1] It accused Boone of leading the group in singing, talking in loud voices, standing and kneeling in close proximity so as to block the

[1]Ga. L. 1976, pp. 471-473, as amended, provides in pertinent part as follows: "Section 1. The Georgia Building Authority and its security personnel and members of the Georgia State Patrol and Georgia Bureau of Investigation are hereby authorized and empowered to deny the entrance of any person into or upon any property or building of the Authority or the State when such person's activities are intended to disrupt or interfere with the normal activities and functions carried on in such property or building or have the potential of violating the security of the personnel therein. The Authority and its security personnel and members of the Georgia State Patrol and Georgia Bureau of Investigation are hereby authorized and empowered to deny entrance into or upon any such property or building of any person displaying any sign, banner, placard, poster or similar device. The Authority and its security personnel and members of the Georgia State Patrol and Georgia Bureau of Investigation are hereby authorized and empowered to remove any person from any such property or building when such person's activities interfere with or disrupt the activities and the operations carried on in such property or building or constitute a safety hazard to such property or building or the inhabitants thereof. The authority and power provided herein shall also extend to any property or building utilized by the State or any agency thereof. Any law enforcement officer assisting the Authority or any of its security personnel and members of the Georgia State Patrol and Georgia Bureau of Investigation shall have the same authority and power bestowed upon the Authority by this Act." Code Ann. § 91-134.

flow of pedestrian traffic in that part of the main lobby adjacent to the administrative offices, and of refusing to vacate the property and building where ordered to do so.[2]

Boone rebutted these allegations contending he led the group in prayer over diminishing welfare benefits and employment discrimination in the Center; that State Highway patrolmen and Georgia Building Authority security personnel, removed their hats and respected the prayer period, then ordered the group to leave. Boone argued he had asked to see the manager of the Center and was told to wait while he was summoned. At this point, the officers refused to let the group wait and arrested them. At the preliminary hearing, all charges were dismissed except those against Boone. The order to leave was given only to him. A motion attacking the constitutionality of the statute was filed and argument heard prior to joining issue on the merits. The trial court determined the statute was "facially unconstitutional" as being vague, overbroad and imposed prior restraint on free speech, observing the statute arms security personnel with authority to determine the subjective intent of a party prior to any act being committed; arms them with authority to exclude persons if the guard thinks they pose a threat to security or if they are "merely" displaying banners or placards. These provisions "invite discriminatory application" and restrict free speech and assembly in violation of the Georgia and United States Constitutions.

The state contends it was error to hold the statute unconstitutional. We agree and reverse.

1. The statute is not facially overbroad nor so vague

[2]"Section 3. Any person who shall refuse to obey any lawful order of any such security personnel or law enforcement officer issued pursuant to this Act, or any person who shall refuse to vacate any such property or building when requested to do so, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as for a misdemeanor." Code Ann. § 91-134. This penalty is also set out in Code Ann. § 91-9908 for refusing orders to leave given pursuant to §§ 91-134 and 91-135.

as to violate First Amendment freedoms of assembly or speech. Art. I, Sec. I, Par. XV, Ga. Const., 1976 (Code Ann. § 2-115); Art. I, U. S. Const. (Code §§ 1-801, 1-815). Its language clearly seeks to proscribe conduct, not free speech, and "... that conduct — even if expressive — falls within the scope of otherwise valid criminal laws that reflect legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct..." Broadrick v. Oklahoma, 413 U. S. 601, 615 (93 SC 2908) (1973). See United States v. Douglass, 579 F2d 545, 550 (1978).Cf. Federal Communications Commission v. Pacifica Foundation, —— U. S. —— (98 SC 3026, 3037) (1978). Further, no constitutional infirmity is created by language in the statute authorizing exclusion of those persons whom a guard, by the exercise of subjective evaluation, determines has the potential of violating the security of personnel or whose activities are intended to disrupt or interfere with the normal activities and functions carried on in the building. Language regarding "intent" is commonly used in statutes regulating conduct.[3] Law enforcement officers must exercise subjective evaluations as part of their duty to protect the public safety, peace,

[3]See Jeanette Rankin Brigade v. Chief of Capitol Police, 342 FSupp. 575 (1972) at pp. 587-588, where the court, after striking down a provision of law restricting *all* parades, etc., upon U. S. Capitol grounds, spoke with approval of other provisions of the same statutes which *were enforceable*. "... [T]hose who presently go upon the Capitol grounds ... are subject to other sections of the existing laws regulating conduct within the Capitol grounds which forbid ... (5) entering or remaining on the floor of either House, or gallery in violation of any rules, or any room with *intent to disrupt* the orderly conduct of official business, (6) uttering loud, threatening or abusive language, or engaging in any disorderly or disruptive conduct anywhere on the grounds *with intent to impede, disrupt, or disturb* the orderly conduct of any session of Congress . . ." (Emphasis supplied.) See 40 USC §§ 193(b)—293(f) (1970).

comfort and convenience from unauthorized conduct. "The state, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated. . ." Adderley v. Florida, 385 U. S. 39, 47 (87 SC 242) (1966). The statute, sub judice, proscribes specific conduct. These restrictions are limited and "... punish only conduct which disrupts or is about to disrupt normal. . . activities . . ." Grayned v. City of Rockford, 408 U. S. 104, 116 (92 SC 2294) (1972). See Tinker v. Des Moines &c. School Districts, 393 U. S. 503, 514 (89 SC 733) (1969).

2. We do not so narrowly construe the language of the statute authorizing denial of entrance into or upon state property to "any person displaying any sign, banner, placard, poster or similar device . . ." as prohibiting entry merely because such signs or placards are present. This prohibition must be construed together with those sentences authorizing denial of entry as construed in Division 1.

3. The statute is also not violative of due process or equal protection guarantees. It comports with fair notice to those to whom the statute is directed, and as we construe the language used here, *actual or imminent* threat of harm or of disruption of on-going operations on state property or in buildings housing state agencies is required. Grayned v. City of Rockford, supra; Cameron v. Johnson, 390 U. S. 611 (88 SC 1335) (1968). We also do not agree that the statute is overbroad as "sweeping within its prohibitions" what may not be punished under the First and Fourteenth Amendments. "[T]he government may adopt reasonable time, place and manner regulations, which do not discriminate among speakers or ideas, in order to further an important governmental interest unrelated to the restriction of communication." Buckley v. Valeo, 424 U. S. 1, 18 (96 SC 612) (1975). See Erznoznik v. City of Jacksonville, 422 U. S. 205, 209 (95 SC 2268) (1975); Cox v. Louisiana, 379 U. S. 536 (85 SC 453) (1965); Adderley v. Florida, supra; Kovacs v. Cooper, 336 U. S. 77 (69 SC 448) (1949).

Judgment reversed. All the Justices concur, except Hill, J., who concurs in Divisions 1 and 3, and in the judgment.

ARGUED MARCH 13, 1979 — DECIDED APRIL 4, 1979.

Violation of Georgia Building Authority Act; constitutional question. Fulton State Court. Before Judge Duke.

Hinson McAuliffe, Solicitor, Charles Hadaway, Assistant Solicitor, for appellant.

Arthur K. Bolton, Attorney General, Daniel M. Formby, Assistant Attorney General, amicus curiae.

Brooks Franklin, Margie Pitts Hames, Al Horn, Reber Boult, for appellee.

STATE OF GEORGIA

CRIMINAL COURT OF FULTON COUNTY

vs.

_____

Whereas the defendant in the above stated case has
( ) plead guilty to the offense stated herein.
( ) been found guilty of the offense stated herein.
It is considered, ordered and adjudged by the Court that the defendant

(a) pay a fine of _____ dollars and be confined for a term of _____ months in the Fulton County jail or public works camp, or such other place as the defendant can be legally confined.
( ) Provided, that the confinement specified shall be suspended on payment of the fine and on condition defendant not again violate the laws of Georgia.

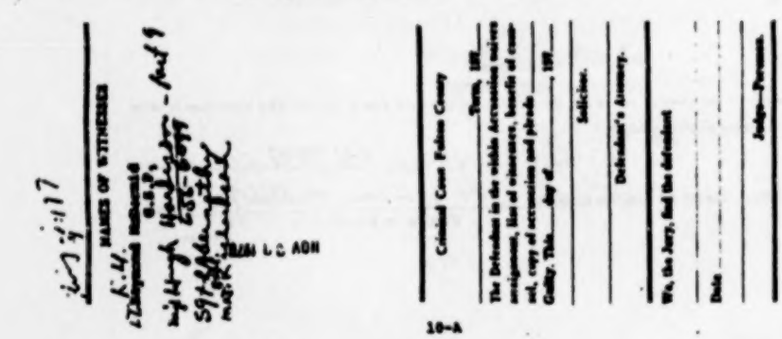
( ) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation and on condition that the defendant not again violate the laws of Georgia.

(b) be confined under the jurisdiction of the State Board of Corrections in the State Penitentiary, in a public works camp, or such other institution as the Director of Corrections may direct for a period of _____ months.
( ) Provided, that the confinement specified is suspended on condition defendant not again violate the laws of Georgia.
( ) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation in said case and on condition that defendant not again violate the laws of Georgia.

This _____ day of _____, 19__.

_____
JUDGE, CRIMINAL COURT OF FULTON COUNTY

6-26-79



STATE OF GEORGIA, FULTON COUNTY

Came in person before me Raymond McDermid who, being duly sworn, deposes and says on oath that from the best of his knowledge and belief Joseph E. Boone

is guilty of the offense of MISDEMEANOR, in that the said accused in the County of Fulton, on the 15th day of September 19 76, did

knowingly and without authority, remain upon the premises of the State of Georgia Building Authority, located at 285 Magnolia St., N.W. after receiving notice from Raymond McDermid, the authorized agent of said owner to depart from said premises

Contrary to Law.

Sworn to and subscribed before me this 23rd day of Sept 19 76

Milton C Bonnick
Notary Public, Fulton County, Georgia.

Raymond McDermid

STATE OF GEORGIA, FULTON COUNTY

I, Raymond McDermid in the name and behalf of the citizens of Georgia, charge and accuse Joseph E. Boone with the offense of MISDEMEANOR, for that the said accused in the County aforesaid, on the 15th day of September 19 76, did

knowingly and without authority, remain upon the premises of the State of Georgia Building Authority, located at 285 Magnolia St., N.W. after receiving notice from Raymond McDermid, the authorized agent of said owner to depart from said premises

Contrary to the Laws of said State, the peace, good order and dignity thereof. This accusation is based on the above attached affidavit.

Sept Term, 19 76

Raymond McDermid Prosecutor

CRIMINAL COURT OF FULTON COUNTY

Hinson McAuliffe 3 Solicitor

MOTION AND ORDER TO PLACE CASE UPON THE

DEAD DOCKET

THE STATE OF GEORGIA : STATE COURT OF FULTON COUNTY

VS : CASE NO. 168819

Joseph E. Boone : OFFENSE: Via Code Section Act 957 1976 Laws p. 471

MOTION

Now comes the State and moves this Honorable Court to place the above stated case upon the dead docket of the court on the following grounds: This case has been redrawn into case number 178468.

SOLICITOR, STATE COURT OF FULTON COUNTY

ORDER

Upon consideration of the foregoing motion, the same granted, and it is ordered that the above stated case be placed on the Dead Docket of this Court.

This the _____ day of Oct 28 1977 19___.

Neil S. Stanbury

JUDGE, STATE COURT OF FULTON COUNTY

STATE OF GEORGIA **STATE COURT OF FULTON COUNTY**

vs

____

Whereas, the defendant in the above stated case has
( ) plead guilty to the offense stated herein,
( ) been found guilty of the offense stated herein,
it is considered, ordered and adjudged by the Court that the defendant

(a) pay a fine of____________________ dollars or be confined for a term of__________ months in the Fulton County jail or public works camp, or such other place as the defendant can be legally confined.
( ) Provided, that the confinement specified shall be suspended on payment of the fine and on condition defendant not again violate the laws of Georgia.

( ) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation and on condition that the defendant not again violate the laws of Georgia.

(b) be confined under the jurisdiction of the State Board of Corrections in the State Penitentiary, in a public works camp, or such other institution as the Director of Corrections may direct for a period of__________ months.
( ) Provided, that the confinement specified is suspended on condition defendant not again violate the laws of Georgia.
( ) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation in said case and on condition that defendant not again violate the laws of Georgia.

This_____, _____day of________________ 197_____.

____
JUDGE, STATE COURT OF FULTON COUNTY

I hereby certify that the within and foregoing is a true, complete and correct copy of the original as it appears by the original on file and of record in my office. Witness my hand and seal of said Court this 6-27-79
[signature] Deputy Clerk

IN RET	WARRANT	DATE SET

WITNESSES

R. H. McDermid G.S.P

Hugh Hardison G.S.P.
656-6032
Bill Richardson G.S.P.
656-5709
R. Abernathy G.S.P.

Post 9 656-6099

(Walter Stephney) 656-
(Lucius Solomon) 5605

Ann Graveline
285 International Blvd.
Atlanta, Ga. 30313
ph. 656-87600

State Court of Fulton County

__________ Term, 197____
The defendant in the within accusation waives arraignment, list of witnesses, benefit of counsel, copy of accusation and pleads ________ Guilty. This____day of________, 197____

____
Assistant Solicitor General

____
Defendant's Attorney

We, the Jury, find the defendant__________

Date__________

____
Judge—Foreman

[illegible] DEC 2 - 1977

STATE COURT OF FULTON COUNTY
Criminal Division

Sept. Term, 1977 Case No. 179188

DD 10/5 STATE OF GEORGIA
VS.
JOSEPH E. BOONE
635 Fair St. S.W. #208

Offense CRIMINAL TRESPASS

D.L. No.	F.P. No.	Race	Age	Sex
		B		M

Deft. Atty. [illegible] Tel. 523-4911

Pro. Atty.__________ Tel._____

Companion Case other cases
Special Instructions redrawn from case #[illegible]

R. H. McDermid Prosecutor
HINSON McAULIFFE, SOLICITOR GENERAL

Arr. Date______ Bond Forfeit______
Reason for Reset______

Cal. Date______ Bond Forfeit______
Reason for Reset______

Cal. Date______ Bond Forfeit______
Reason for Reset______

Cal. Date______ Bond Forfeit______
Reason for Reset______

B/F Set Aside______
B/F Set Aside______

Amount of Fine Paid______

Received by__________ (Title)

STATE OF GEORGIA, FULTON COUNTY

Came in person before me, R. H. McDermid who, being duly sworn, deposes and says on oath that from the best of his knowledge and belief Joseph E. Boone is guilty of the offense of MISDEMEANOR, in that the said accused, in the County of Fulton, on the 15th day of September, 1976, did

after going on the premises of Georgia Building Authority located at 285 Magnolia St. N.W. and after interferring with and disrupting the operation carried on in such property by singing, praying, and kneeling and sitting on the floor, completely blocking the flow of pedestrian traffic, fail and refuse to obey the lawful order of Hugh Hardison authorized agent of the owner of such premises to depart from such premises and did fail to leave such premises after being ordered to leave such premises, by a law enforcement officer,

Contrary to Law.

Sworn to and subscribed before me this 30th day of September, 1977
[signature] Notary Public, State of Georgia
Virginia J. Jones

R. H. McD

STATE OF GEORGIA, FULTON COUNTY

I, Hinson McAuliffe, in the name and behalf of the citizens of Georgia, charge and accuse Joseph E. Boone with the offense of MISDEMEANOR, for that the said accused, in the County of Fulton, on the 15th day of September, 1976, did

after going on the premises of Georgia Building Authority located at 285 Magnolia St. N.W. and after interferring with and disrupting the operation carried on in such property by singing, praying, and kneeling and sitting on the floor, completely blocking the flow of pedestrian traffic, fail and refuse to obey the lawful order of Hugh Hardison authorized agent of the owner of such premises to depart from such premises and did fail to leave such premises after being ordered to leave such premises, by a law enforcement officer,

Contrary to the Laws of said State, the good order, peace and dignity thereof. This accusation is based on the above attached affidavit of R. H. McDermid.

STATE COURT OF FULTON COUNTY [signature: Hinson McAuliffe]
Hinson McAuliffe, Solicitor General

10

MOTION AND ORDER TO PLACE CASE UPON THE

DEAD DOCKET

THE STATE OF GEORGIA : STATE COURT OF FULTON COUNTY

VS : CASE NO. 178468

Joseph E. Boone : OFFENSE: Vio. Code Section Act 957 1976 Laws p. 471

M O T I O N

Now comes the State and moves this Honorable Court to place the above stated case upon the dead docket of the court on the following grounds: This case has been redrawn into case number 179229.

[signature]

SOLICITOR, STATE COURT OF FULTON COUNTY

O R D E R

Upon consideration of the foregoing motion, the same granted, and it is ordered that the above stated case be placed on the Dead Docket of this Court.

This the ________ day of DEC 2 - 1977 19__.

[signature]

JUDGE, STATE COURT OF FULTON COUNTY

STATE OF GEORGIA

vs

Joseph E. Boone

STATE COURT OF FULTON COUNTY

6-28-77

Whereas, the defendant in the above stated case has
( ) plead guilty to the offense stated herein,
( ) been found guilty of the offense stated herein,
it is considered, ordered and adjudged by the Court that the defendant

(a) pay a fine of ____________ dollars and be confined for a term of ________ months in the Fulton County jail or public works camp, or such other place as the defendant can be legally confined.
( ) Provided, that the confinement specified shall be suspended on payment of the fine and on condition defendant not again violate the laws of Georgia.

( ) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation and on condition that the defendant not again violate the laws of Georgia.

(b) be confined under the jurisdiction of the State Board of Corrections in the State Penitentiary, in a public works camp, or such other institution as the Director of Corrections may direct for a period of ________ months.
( ) Provided, that the confinement specified is suspended on condition defendant not again violate the laws of Georgia.
( ) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation in said case and on condition that defendant not again violate the laws of Georgia.

This ________ day of ____________, 197____.

JUDGE, STATE COURT OF FULTON COUNTY

TICKET	WARRANT	DATE SET

WITNESSES

R. H. McDermid— 656-6099
Hugh Hardison 656-6092
Bill Richardson 656-5704
R. Abernathy
Ga. State Patrol
Post 9, 656-6099

STATE COURT OF FULTON COUNTY
Criminal Division

Oct. Term, 1977 Case No. ________

STATE OF GEORGIA
VS.
JOSEPH E. BOONE
635 Fair St. SW #208

Offense VIO. CODE SECTION ACT 957 1976 Laws p. 471

D.L. No.	F.P. No.	Race	Age	Sex
		B		M

Deft. Atty. Al Horn Tel. 523-8611

Pro. Atty. ________ Tel. ________

Companion Case 176169 & 176979 other cases

Special Instructions ________

Redrawn from Case #178468

Raymond H. McDermid Prosecutor

HINSON McAULIFFE, SOLICITOR GENERAL

Arr. Date ________ Bond Forfeit ________

Reason for Reset ________

Cal/Date ________ Bond Forfeit ________

Reason for Reset ________

Cal. Date ________ Bond Forfeit ________

Reason for Reset ________

Cal. Date ________ Bond Forfeit ________

Reason for Reset ________

B/F Set Aside ________ 12/2/77

B/F Set Aside ________

Amount of Fine Paid ________

Received by ________ (Title)

State Court of Fulton County

________ Term, 197__

The defendant in the within accusation waives arraignment, list of witnesses, benefit of counsel, copy of accusation and pleads ________ Guilty. This ____ day of ________, 197__.

Assistant Solicitor General

Defendant's Attorney

We, the Jury, find the defendant ________

Date ________

Judge—Foreman

STATE OF GEORGIA, FULTON COUNTY

Came in person before me Raymond H. McDermid who, being duly sworn, deposes and says on oath that from the best of his knowledge and belief Joseph E. Boone is guilty of the offense of MISDEMEANOR, in that the said accused, in the County of Fulton, on the 15th day of September, 1976, did

in concert with other persons, unknown to the prosecutor herein, go upon the premises of the Georgia Building Authority, located at 285 Magnolia Street, N.W., and while thereupon, interfere with and disrupt the activities and operations then and there being carried on in said building and property by sitting in the floor of said building and thereby blocking the flow of pedestrian traffic; and did refuse to vacate said building and premises when requested to do so by Hugh Hardison, authorized agent of the Georgia Building Authority and its secutiry personnel,and also by a law enforcement officer assisting the Georgia Building Authority and its security personnel,

Contrary to Law.

Sworn to and subscribed before me this 28th day of October, 1977.

Milton C. Barwick
Notary Public, State of Georgia

Raymond H. McDermid

Milton C. Barwick

STATE OF GEORGIA, FULTON COUNTY

I, Hinson McAuliffe, in the name and behalf of the citizens of Georgia, charge and accuse Joseph E. Boone with the offense of MISDEMEANOR, for that the said accused, in the County of Fulton, on the 15th day of September, 1976, did

in concert with other persons, unknown to the prosecutor herein, go upon the premises of the Georgia Building Authority, located at 285 Magnolia Street, N.W., and while thereupon, interfere with and disrupt the activities and operations then and there being carried on in said building and property by sitting in the floor of said building and thereby blocking the flow of pedestrian traffic; and did refuse to vacate said building and premises when requested to do so by Hugh Hardison, authorized agent of the Georgia Building Authority and its secutiry personnel,and also by a law enforcement officer assisting the Georgia Building Authority and its security personnel,

Contrary to the Laws of said State, the good order, peace and dignity thereof. This accusation is based on the above attached affidavit of Raymond H. McDermid.

STATE COURT OF FULTON COUNTY

Hinson McAuliffe
Hinson McAuliffe, Solicitor General

IN THE STATE COURT OF FULTON COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

VS

ACCUSATION NO. 179229

Joseph Boone

Violation Code § Act 957, Ga. Laws 1976, p. 471

ORDER OF COURT PLACING CASE ON THE DEAD DOCKET

For good and sufficient cause, the Court is of the opinion that the above stated case should be now placed on the dead docket of this Court.

Therefore, it is the order of the Court that said above stated case be placed on the dead docket of this Court.

This, the 9 day of Jul 1978.

JUDGE
STATE COURT OF FULTON COUNTY

STATE OF GEORGIA, FULTON COUNTY

Came in person before me Raymond H. McDermid who, being duly sworn, deposes and says on oath that from the best of his knowledge and belief Joseph E. Boone is guilty of the offense of MISDEMEANOR, in that the said accused, in the County of Fulton, on the 15th day of September 1976

lead a group of approximately twenty-five persons, who are unknown to the prosecutor herein, which, while upon the property and building of the State of Georgia, located at 285 Magnolia Street, N.W., known as the Georgia World Congress Center, interfered with and disrupted the activities and operations then and there being carried on in said property and building by singing and talking in loud voices, and by standing and kneeling in such close proximity so as to block the flow of pedestrian traffic in that part of the main lobby adjacent to the administrative offices; refuse to vacate said property and building when requested to do so by Dan Graveline, authorized agent of the Georgia Building Authority; and refuse to vacate said property and building when requested to do so by Hugh Hardison and Walter Stepney, law enforcement officers assisting the Georgia Building Authority and its security personnel,

in the County of Fulton, on the 15th day of September 1976 did

lead a group of approximately twenty-five persons, who are unknown to the prosecutor herein, which, while upon the property and building of the State of Georgia, located at 285 Magnolia Street, N.W., known as the Georgia World Congress Center, interfered with and disrupted the activities and operations then and there being carried on in said property and building by singing and talking in loud voices, and by standing and kneeling in such close proximity so as to block the flow of pedestrian traffic in that part of the main lobby adjacent to the administrative offices; refuse to vacate said property and building when requested to do so by Dan Graveline, authorized agent of the Georgia Building Authority; and refuse to vacate said property and building when requested to do so by Hugh Hardison and Walter Stepney, law enforcement officers assisting the Georgia Building Authority and its security personnel,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-11

JOSEPH BOONE,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Georgia

BRIEF IN OPPOSITION FOR RESPONDENT

ARTHUR K. BOLTON
Attorney General

ROBERT S. STUBBS II
Executive Assistant Attorney General

DON A. LANGHAM
First Assistant Attorney General

ALFRED L. EVANS, JR.
Senior Assistant Attorney General

J. ROBERT COLEMAN
Senior Assistant Attorney General

DANIEL M. FORMBY
Assistant Attorney General

Please serve:
DANIEL M. FORMBY
132 State Judicial Building
40 Capitol Square, S.W.
Atlanta, Georgia 30334
(404) 656-4935

INDEX

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

IN THE

Supreme Court of the United States

October Term, 1979

No. 79-11

JOSEPH BOONE,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Georgia

BRIEF IN OPPOSITION FOR RESPONDENT

OPINION BELOW

The opinion of the Supreme Court of Georgia, reported at 243 Ga. 416, 254 S.E.2d 367 (1979), is accurately set forth in the Petition as is the unreported order of the trial court.

JURISDICTION

Petitioner invokes the Court's jurisdiction under 28 U.S.C. § 1257(3), 28 U.S.C. § 2101(d) and U.S. Sup. Ct. Rule 22.1. For reasons we shall come to we believe that there is a want of jurisdiction in that: (1) the portions of a lengthy criminal trespass statute to which petitioner's constitutional attacks are chiefly (if not exclusively) directed are not involved in the case at bar (petitioner

essentially asking for advisory opinions about hypothetical questions, with no "case or controversy" within the meaning of Article III, Section II of the Constitution presented), and (2) the constitutionality of the precise portion of the statute which is involved is so settled as to negate the existence of any substantial federal question concerning its validity. See *Alonso v. The State of Georgia*, 231 Ga. 444 (1973), *appeal dismissed for want of a substantial federal question*, 417 U.S. 938 (1974).

QUESTIONS PRESENTED

1. May petitioner successfully invoke this Court's jurisdiction to review his accusation under a criminal trespass statute by constitutional attacks on parts of the statute which are nowise related to the accusation?

2. Is the precise portion of the statute upon which the accusation is based so obviously constitutional as to preclude the existence of the sort of substantial and unresolved federal question which would merit the Court's plenary review of the matter?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

While petitioner correctly cites the constitutional provisions and statutes involved, we would observe at the outset that in setting forth Section 1 of the criminal trespass statute of Georgia here in issue (i.e. Ga. Laws 1976, pp. 471-473, Ga. Code Ann. § 91-134) *in toto*, much is included that has no relationship or relevance at all to the actual accusation which commenced this litigation. The precise portion of Section 1 which is involved in the case at bar (i.e. the part of the statute upon which the

accusation was in fact based) is as follows:

> "The Authority and its security personnel are hereby authorized and empowered to remove any person from any such property or building when such person's activities interfere with or disrupt the activities and the operations carried on in such property or building or constitute a safety hazard to such property or building or the inhabitants thereof."

STATEMENT OF THE CASE

Petitioner was arrested on September 15, 1976, on property of the State of Georgia known as the Georgia World Congress Center, a convention center located in Atlanta, Georgia. The misdemeanor accusation filed against petitioner charged that he had led approximately twenty-five persons who:

> "while upon the property and building of the State of Georgia, located at 285 Magnolia Street, N.W., known as the Georgia World Congress Center, interfered with and disrupted the activities and operations then and there being carried on in said property and building by singing and talking in loud voices, and by standing and kneeling in such close proximity so as to block the flow of pedestrian traffic in that part of the main lobby adjacent to the administrative offices,"

and that he refused to vacate the premises when directed to do so by proper authorities acting on behalf of the Georgia Building Authority.[1]

---

[1] The Georgia Building Authority, an instrumentality of the State of Georgia and a public corporation, created by the legislature of the State of Georgia, acquires, operates and maintains certain properties and buildings for the use of agencies and departments of the State of Georgia. Ga. Laws 1967, p. 856 (Ga. Code Ann. Chapter 91-5A).

That this accusation is squarely based upon that particular sentence (and none other) of Section 1 of the criminal trespass statute quoted in the preceding section of this brief is, we think, too obvious to require amplification. Yet the trial court, apparently giving no heed at all to what part of the statute the accusation was in fact based upon, proceeded to agree *sub silentio* with petitioner's theory that the accusation could be contested by attacking the lengthy statute *in toto* as being "facially invalid" – *based on provisions, sentences and clauses which had absolutely no bearing at all on what the accusation was about.* The trial court declared the statute unconstitutional *in toto* and discharged petitioner, based upon what the trial court saw as an improper "authority" *to exclude persons from entering State properties* based upon a subjective estimation of intent (said to be a prior restraint on free speech), and an authority *to deny entry* because of a display of banners, placards, etc. This was done notwithstanding the fact that these "keep out" provisions, as the petition for certiorari itself clearly shows, were nowise involved. Petitioner and those he led were *not* denied entry (i.e. arguably a prior restraint) but had entered and were arrested only *after* creating a disturbance and blocking the flow of pedestrian traffic.

As ought to have been anticipated, this obviously erroneous ruling of the trial court was reversed by the Supreme Court of Georgia. The only thing unusual about the reversal was that the Supreme Court of Georgia, in what is properly to be considered as expansive dicta, not only reversed but pointed out the errors in the trial court's rationale concerning the questioned constitutionality of those parts of the lengthy criminal trespass statute *not actually involved in the case* [i.e. the "keep out" provisions

based upon "intent," as well as the "banners and placards" prohibition which the Supreme Court of Georgia construed as requiring a showing of intent to disrupt, this being consistent with such cases as *Adderley v. Florida*, 385 U.S. 39 (1966)].[2]

ARGUMENT

I. Since the portions of Georgia's criminal trespass statute to which petitioner's attacks are directed are nowise related to the accusation or charges involved, there is a want of jurisdiction which we submit ought to be fatal to the grant of a writ of certiorari.

In attacking portions of a multi-faceted criminal trespass statute which has no bearing at all on what he has in fact been charged with, petitioner fails, as we see it, to present a "case or controversy" within the meaning of Article III, Section II of the United States Constitution. This Honorable Court has repeatedly said that litigants are not entitled to advisory opinions on disputes which are of a hypothetical or abstract nature. E.g. *Barr v. Matteo*, 355 U.S. 171, 172 (1957); *Eccles v. Peoples Bank of Lakewood Village, California*, 333 U.S. 426, 432 (1948); *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227, 240-41 (1937).

Surely it is axiomatic that even were one to agree *arguendo* with petitioner's constitutional contentions concerning parts of the statute unrelated to the accusation in this particular case (and in fact we strenuously disagree with and think the Supreme Court of Georgia correctly

---

[2] In *Adderley v. Florida*, 385 U.S. 39, 40, N.1 (1966) this Court rejected an attack on a Florida criminal trespass statute which was hinged to trespasses committed with "a malicious and mischievous *intent.*"

answered these contentions), it has long been the rule that the unconstitutionality of one part of an Act does not defeat the validity of a remaining portion of the Act which is, as it unquestionably is in the case at bar, capable of independent enforcement. See, e.g. *Buckley v. Valeo*, 424 U.S. 1, 108-109 (1976); *Tilton v. Richardson*, 403 U.S. 672, 684 (1971); *United States v. Jackson*, 390 U.S. 570, 585 (1968); *Champlin Refining Co. v. Corporation Commission of Oklahoma*, 286 U.S. 210, 234 (1932). This rule has been uniformly held applicable even where the valid and invalid provisions are in the same paragraph or section of the statute, see *Berea College v. Commonwealth of Kentucky*, 211 U.S. 45, 55-56 (1908); *Loeb v. Columbia Township Trustees*, 179 U.S. 472, 489-490 (1900); 82 C.J.S. *Statutes* § 92, p. 152 (citing numerous state court decisions).

This rule is, or course, but a manifestation of the jurisprudential principle that judicial review of statutory enactments is not to be viewed as a "search out and destroy" mission, but that to the contrary:

> "The cardinal principle of statutory construction is to save and not to destroy." *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 30 (1937).

It follows that in a criminal proceeding attacks upon a criminal statute for vagueness or for any other claimed constitutional defect, need not be considered where the indictment is not based upon the language attacked but rests upon other portions of the same statute. *Collier v. United States*, 283 F.2d 780, 781 (4th Cir. 1960), *cert. denied*, 365 U.S. 833 (1961). This is, of course, exactly the situation in the case at bar.

II. The precise provision of the statute which is involved in this case is clearly constitutional and poses no substantial federal question which could conceivably be said to call for plenary review by the Supreme Court of the United States.

Looking to the actual "accusation" giving rise to this litigation, we see that petitioner has been charged with blocking pedestrian traffic and interfering with activities and operations in progress in a public building, the charge being based upon the statutory provision authorizing the removal of persons from State property when their activities "interfere with or disrupt the activities and operations carried on in such property or building." [3] The facts are in substance not unlike those presented in *Alonso v. The State of Georgia*, 231 Ga. 444, 202 S.E.2d 37 (1973), *appeal dismissed for want of a substantial federal question*, 417 U.S. 938 (1974), which involved a constitutional attack upon an analogous criminal trespass provision.

We submit that this Court's disposition of *Alonso* should be controlling here. As long ago as *Hague v. C.I.O.*, 307 U.S. 496, 515-516 (1939), the Court pointed out that:

> "The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peach and good order. . . ."

---

[3] Since the case has not yet proceeded to trial on the merits, no judicial determination of the facts has been rendered.

In *Cox v. Louisiana*, 379 U.S. 536, 555 (1965), the Court said:

> "We emphatically reject the notion urged by appellant that the First and Fourteenth Amendments afford the same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching, and picketing on streets and highways, as these amendments afford to those who communicate ideas by pure speech ... it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced or carried out by means of language, either spoken, written or printed."

In *Cox* this Court further emphasized that:

> "The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time. The constitutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy." 379 U.S. *supra* at 554.

We respectfully submit that the sort of limitations or restrictions which a state may place upon assembly, petitioning and the group exercise of "free speech" obviously are (and must be if government is to function) greater in buildings than on the streets or in public parks. In *Adderley v. Florida*, 385 U.S. 39, 47 (1966), this Court pointed out in a factual situation not unlike that presented in the case at bar, to wit: convictions under a criminal trespass statute of persons refusing to leave public property upon being directed to do so:

> "The State, no less than a private owner of property, has power to preserve the property under its control *for the use to which it is lawfully dedicated.*" (emphasis added).

We submit in light of the above authorities, the accusation or charge actually involved in this case (i.e. obstructing pedestrian traffic and by noise interfering with and disrupting activities and operations then being carried on in the Georgia World Congress Center) clearly relates to *conduct* rather than to the substance of petitioner's "speech," and is so palpably devoid of merit as a legitimate First Amendment contention as not to warrant further argument before this Court.

CONCLUSION

For the reasons stated petitioner's contentions and the questions he seeks to present to this Court are wholly unsubstantial and fail to present a federal constitutional issue which would warrant further consideration by this Court. We respectfully submit that petitioner's petition for issuance of a writ of certiorari should for this reason be denied.

Respectully submitted,

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